



October 18, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
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Washington, DC 20510

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Re: *Notice of Ex Parte Presentation, Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106*

Dear Ms. Dortch:

Nokia submits this letter to respond to the Fact Sheet, issued October 6, 2016, describing Chairman Wheeler's proposal regarding Commission regulation of Internet Service Provider (ISP) use of customer information.¹ Nokia favors the Commission's shift to a sensitivity based approach to privacy, and toward harmonization with the Federal Trade Commission's privacy framework. However, Nokia's concerns remain largely unchanged and – in certain cases – are magnified by the current proposal. It could be particularly problematic if the Commission follows through with its broad definition of information that is "sensitive," or applies that category to several routine ISP uses of customer data that demand access to such sensitive information.

In particular, Nokia has voiced² its support of the NPRM's proposal to permit, without an opt-in requirement, the ability to:

- (1) use, disclose, or permit access to customer information necessary to, or used in, the provision of the broadband service;
- (2) use, disclose or permit access to aggregate customer information; and
- (3) use customer information to market other communications-related services.³

¹ Federal Communications Commission, *Fact Sheet: Chairman Wheeler's Proposal to Give Broadband Consumers Increased Choice Over their Personal Information* (rel. Oct. 6, 2016), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1006/DOC-341633A1.pdf ("Fact Sheet"). The final terms of the Commission's broadband privacy proposal remain unclear.

² See, e.g., Reply Comments of Nokia, WC Docket No. 16-106 (filed July 6, 2016).

³ Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, Notice of Proposed Rulemaking, WC Docket No. 16-106, FCC 16-39 (rel. April 1, 2016) ("NPRM").

Broad discretion for ISPs in these three use categories would serve the public interest, promoting a better broadband experience for consumers and ensuring continued robust investment by ISPs and equipment vendors like Nokia.

Real-time access to customer information, *as well as the ability to analyze both live and stored information over time*, is critical to making the “personalized network experience” and other intelligent network technologies a reality, allowing Nokia and its broadband provider partners to ensure a quality broadband experience to consumers. These functions must be considered (as the Fact Sheet states) “Exceptions to the Consent Requirements . . . spelled out in the statute.” Broad use of, and analysis of, customer information will become increasingly important as consumer broadband demand competes with new market segments made possible by 5G and the Internet of Things, such as connected cars, the development of a “tactile Internet” for applications like remote surgery, low-latency industrial applications, and other uses yet to be imagined. It should be obvious that an ISP requires access to certain information that the Fact Sheet indicates may be considered “sensitive,” such as the consumer’s “geo-location” and “app usage history” in order to ensure app performance and network service quality. The location of the consumer, the apps being used, and the user/network experience are essential to understanding network performance and the resources needed to improve performance consistent with consumer expectations. The Commission should make clear that use of customer information, including sensitive information, is therefore broadly permitted in the provision of broadband service to a customer.

Nokia appreciates the Fact Sheet’s continued recognition that de-identified information presents “fewer privacy concerns than other types of information.” Nokia also agrees with the proposal to harmonize the Commission’s approach to treatment of this information with the Federal Trade Commission’s three-part test to prevent re-identification of this information. Aggregated, de-identified information, paired with cutting-edge computing and analytics, offers significant value for informing network builds and civic planning, among other public goods.

As a final matter, we reiterate the importance of allowing ISPs to market services to their own customers without requiring opt-in. At a minimum, it is a reasonable expectation of a customer of an ISP that the provider will access and use the customer’s information to market additional services to that customer. Under the terms of the Fact Sheet, it appears that the Commission is considering greater flexibility for this type of marketing using non-sensitive information, but ISPs should also be able to use “sensitive” information for such marketing. Here, again, ISP use of geo-location and app usage history would facilitate the ISP’s ability to serve its customers and market the appropriate broadband related services to the customer.

Nokia understands that certain marketing restrictions may be necessary to protect consumer privacy, but the Commission should not tie an ISP’s hands by restricting the ISP from monitoring basic aspects of the consumer experience and using that information to best serve its customers. As just one example, an ISP having knowledge that a consumer is having a poor user experience with a particular app, combined with information about the network performance in areas where the consumer has attempted to use an app, could allow a provider to rule out network effects and notify the consumer whether a different device, usage pattern, or service plan could improve that experience.

Please contact the undersigned with any questions in connection with this submission.

Respectfully submitted,

/s/ Brian Hendricks

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